THE RITZ HOTEL CASINO LTD & ANOR

v.

DATU SERI OSU HJ SUKAM

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
IAN HC CHIN J
[ORIGINATING SUMMONS NO: K24-105-2004]
5 JULY 2005

CIVIL PROCEDURE: *Reciprocal enforcement of judgments - Application for registration of foreign judgment for gambling debt - Service by private agent, whether allowed - Enforcing judgment for gambling debt, whether against public policy*

This was an application by two foreign judgment creditors ('JCs') to register a foreign judgment for a gambling debt against the judgment debtor ('JD') as a judgment of the High Court in Sabah and Sarawak pursuant to the Reciprocal Enforcement of Judgments Act 1958. The JD incurred the gambling debt after the JCs allowed him to gamble on credit in a casino in London. The said debt was for an equivalent of RM7,142,859.98. Two issues arose for determination. Firstly, whether service by a private agent contravened O. 65 of the Rules of the High Court 1980. Secondly, whether registration of a foreign judgment for a gambling debt was contrary to public policy in Malaysia.

Held (dismissing the application with no order as to costs):

[1] The High Court decision in the case of *United Overseas Bank Ltd v. Wong Hai Ong* that did not allow service of a foreign process by a private agent in Malaysia was reversed on appeal by the Court of Appeal. Notwithstanding that there was a pending application for leave to appeal against the Court of Appeal decision to the Federal Court, service of a foreign process by a private agent was now allowed in Malaysia. (p 392 a-g)

[2] Gambling is injurious to public welfare as being against Malaysia's national philosophy, the Rukun Negara. It is universally recognised in Malaysia that gambling is evil and against the teaching of religion. Gambling is allowed under license in Malaysia to prevent it from being run by the underworld and not that it is favoured. Any profit made from gambling can fairly be said to be profit from vice. A casino could not be

likened to a bank that the JCs appeared to argue. A foreign bank lending money to a Malaysian in a foreign country would not face the problem of public policy even though the foreign bank is not licensed in Malaysia. Further, it was offensive and unfair to allow a foreign judgment that had enticed a person to gamble on credit. It followed that anything that seeks to go against the Rukun Negara must surely be regarded as against public policy. (p 393 b & 395 a-e & f-h)

Case(s) referred to:
The Aspinall Curzon Ltd v. Khoo Teng Hock [1991] 2 MLJ 484 ***(not foll)***
United Overseas Bank Ltd v. Wong Hai Ong [1999] 5 CLJ 405 HC ***(refd)***

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, s. 5(1)(v)
Rules of the High Court 1980, O. 65

For the judgment creditors - Colin Lau; M/s Colin Lau & Co
For the judgment debtor - Sugumar Balakrishnan; M/s Sugumar & Co

Reported by Usha Thiagarajah

JUDGMENT

Ian HC Chin J:

Introduction

This is an application by two foreign judgment creditors, The Ritz Hotel Casino Limited and RHC Limited, to have a judgment obtained by them in the English High Court ("the judgment") against the judgment debtor, Datu Sri Osu Haji Sukam, registered as a judgment of the High Court in Sabah and Sarawak pursuant to the Reciprocal Enforcement of Judgments Act 1958 ("the Act"). The judgment is for an equivalent RM7,142,859.98. I ordered that the application be heard *inter partes* because though the initial application could be dealt with *ex parte* because the judgment debtor would nevertheless have the right to apply to set aside the registration of the judgment under s. 5 of the Act. That being the case I was of the view that I might as well at this stage deal with the argument, if any, as to whether the registration of the judgment would be liable to be set aside. Hence the application was heard *inter partes.*

The judgment debtor contended that the judgment for various reasons should or could not be registered which contentions I will now turn to but only with two of them and actually only one is sufficient to dispose of the matter herein. The other was also dealt with to highlight the difficulty a High Court judge faces where there are pending appeals against his decision.

Non-Compliance With O. 65

Reliance was placed on my decision in *United Overseas Bank Ltd v. Wong Hai Ong* [1999] 5 CLJ 405 to argue on behalf of the judgment debtor that since the foreign process was served by a private agent on the judgment debtor in Malaysia it contravened O. 65 of the Rules of the High Court 1980 and the judgment was consequently irregular. That case concerned the service of a Singapore High Court writ by a private agent in Kuching, Sarawak, Malaysia and which I held not permissible. Unbeknown to both counsel, this case was reversed by the Court of Appeal on 26 January 2004 but thus far the grounds of decision of the Court of Appeal are still being awaited as there is a pending application for leave to appeal against the decision of the Court of Appeal to the Federal Court which application was on 11 April 2005 adjourned indefinitely to await the grounds of decision of the Court of Appeal. In the meantime, I either postpone (1) indefinitely all cases that may crop up concerning the same issues until the grounds of decision of the Court of Appeal are known or until the matter of the appeal is dealt with by the Federal Court or (2) proceed to hear the matters relying on the ruling of the Court of Appeal though not knowing its reasons. I chose the latter course to avoid a pile up of cases.

As for the over-turning of the said decision by the Court of Appeal, it may well be the end of reciprocity to Malaysia's disadvantage because while we now allow the service of a foreign process by a private agent in Malaysia we do not know how many foreign countries allow the service of a Malaysian process by a private agent in that foreign country. Worse still, we may open Malaysia to a foreign country to exercise extra-territorial jurisdiction by allowing a foreigner to sue in his own country a Malaysian in respect of, say, a contract made in Malaysia between a Malaysian and a foreigner; imagine the expense a Malaysian would be put to in having to travel to a distant country to defend himself. Be that as it may, I have to conclude relying on the said decision of the Court of Appeal that there is no merit in the argument that a foreign process cannot be served by a private agent in Malaysia. I turn now to the argument "that the enforcement of the judgment would be contrary to public policy in Malaysia" (see s. 5(1)(v) of the Act).

Public Policy

Now the judgment recovered in the English court was for a gambling debt incurred by the judgment debtor after he was allowed by the judgment creditors to gamble on credit as opposed to cash in a casino in London. Is the enforcement of such a judgment in Malaysia contrary to public policy in Malaysia? But I turn first to the question of what is "public policy"? Pollock & Mulla on *Indian Contract And Specific Relief Act*, 10th edn. describes it in this term:

> Public Policy. – The principle of public policy is this: *ex dolo malo non oritur* action. Lord Brougham defines public policy as the principle which declares that no man can lawfully do that which has a tendency to be injurious to the public welfare.

There is no doubt that gambling is injurious to the pubic welfare or else there would not have been a law from time immemorial that gambling debts are irrecoverable. Not only that, two of the principles of Malaysia national philosophy called the Rukun Negara (in the Malay language), that is Belief in God and Good Social Behavior, would mean that gambling is injurious to the public welfare as being against the Rukun Negara. The complete principles of the Rukun Negara that guide Malaysians are these:

1. Belief in God
2. Loyalty to King and Country
3. Supremacy of the Constitution
4. The Rule of Law
5. Mutual respect and good social behavior

It is recognized that gambling and prostitution are two twin vices that we should avoid and therefore, it cannot be good social behavior to indulge in them. In multi-racial and multi-religious Malaysia, Muslims are expressly prohibited from patronizing casinos and other gambling outlets and the Qur'an forbids so in these words:

> They ask you concerning alcohol and gambling. Say: "In them is a great sin, and some benefits for men, but the sin is far greater than the benefit." (Holy Qur'an 2:219)

Gambling is similarly prohibited by the Bible and I need only reproduce one of many verses in the Bible that says so implicitly:

> He that hastens to be rich hath an evil eye, and considers not that poverty shall come upon him. (Prov. 28:22)

The Chinese in China had from dynasty to dynasty wrestled with the problem of gambling and banning it and the Malaysians of Chinese descent also face the problem of gambling whose associate of is the loan sharks. Another civilization that frowns upon gambling are the Hindus and I need only refer to the following couplets of the Tirukural, a 2,200-year-old South Indian Dravidian classic on ethical living and the revered scripture in South India, where they say:

931. Do not take to gambling, even if you can win, for your wins will be like the baited hooks that fish swallow.

932. To win once, a gambler loses a hundred times. What a way to procure happiness and prosperity!

933. Incessantly calling bets on rolling dice causes a man's rich reserves and potential revenues to run elsewhere.

934. Gambling brings on many miseries and erodes one's good name. Nothing else ends in such wretched poverty.

935. Desiring to win everything, those who love the dice, the gambling hall and their lucky hand lose it all.

936. Gambling is Misfortune's other name. Fools ensnared by her will suffer an empty stomach and distressing sorrows.

937. Spending time in the gambling hall squanders ancestral wealth and wastes personal worth.

938. Gambling will consume a man's wealth and corrupt his honesty. It will curtail his benevolence and increase his torment.

939. Those who take to gambling's fickle gain forfeit these five: raiments, riches, rations, renown and erudition.

940. The gambler's passion increases with the losses incurred. Even so does the soul's craving for life grow with the griefs suffered.

(http://www.himalayanacademy.com/resources/books/weaver/i_one.htm).

The Buddhists also have a disdain for gambling and I need only quote the following passage to prove the point:

> Similarly, correct conduct was also crucial to preserving one's prosperity. In this respect, the Buddha advised Sigala to avoid six activities which would lead to the loss of prosperity that is gained through the fulfillment of one's social responsibilities and one's correct allocation of income. The six activities to be avoided are gambling, costly entertainment, associating with bad friends, laziness, consumption of intoxicants and sauntering in the streets at unseemly hours. (BUDDHISM IN PRACTICE, Dr. Peter Della Santina, Ph.D.)
>
> (http://www.ecst.csuchico.edu/~dsantina/prac3.htm)

I can go on with citing from other faiths or religions but I do not think it is necessary as what I have mentioned is enough justification for saying that it is universally accepted that gambling is a vice. It is also universally recognized in Malaysia that gambling is evil and against the teaching of our religion and not the least of all that gambling appeals to greed, that is getting rich without having to work. Belief in God, one of the principles of our national philosophy, must surely mean believing and following the teachings of the religion. It was mentioned that gambling is allowed under licence in Malaysia but that was because it was to prevent it from being run by the underworld and it was not that it was something that was good. It is my view that any profit to be made from gambling (and from prostitution) can fairly be said to be profit from vice. In this regard, I do not see how a casino can be likened to a bank which the judgment creditors appear to argue. A foreign bank lending money to a Malaysian in a foreign country would not face the problem of public policy even though the foreign bank is not licensed in Malaysia. But it is a different proposition if a prostitute who legally practiced her trade (as it is allowed in certain countries) and had obtained a foreign judgment for services to a Malaysian. The prostitute would face the same impediment as that of casino, that is of it being against public policy since it is one of the twin vice and which is against our religious belief even though it is legal in the foreign country. Therefore, it would be accurate to equate a casino business with that of prostitution (both being legal in many foreign countries) but whose activities are against public policy. It was totally inappropriate to liken a casino with a bank to argue that since it has a licence, there should be no objection to the registering of the foreign judgment because banking business is not a vice unlike prostitution and gambling. What is offensive and totally unfair is for the casino to allow someone to gamble on credit in order to make him loose not only his pants but the livelihood of his wife and children as in this case. It may be forgivable that the casino is able to entice someone to enter the casino and lose everything that he has on his body but not otherwise, for the reasons I mentioned earlier. I therefore cannot agree with *The Aspinall Curzon Ltd v. Khoo Teng Hock* [1991] 2 MLJ 484 which allowed the registration of a foreign judgment for a gambling debt as that case never considered the matters I have mentioned. Malaysians are God-fearing people, at least that is what the Rukun Negara, wants us to be and to allow a foreign judgment which had enticed a person to gamble on credit and to gamble away the welfare of the family and leave the state to pick up the pieces and thus lead one away from the path God has shown us would surely be against the principle of Belief in God and believing in God means eschewing gambling since it is a form of covetousness, that is to desire to be rich quickly without working. In another word, it is against the Rukun Negara. Anything that seeks to go against the Rukun Negara must surely be regarded as against public policy.

As for the argument that gambling debt incurred in Malaysia would suffer the same fact in a foreign country if I do not allow the registration of the foreign judgment. My short answer would be that the world would be so much the better for it and makes for a better public policy. The world would be a much nicer place if no country would allow the recovery of a judgment for a gambling debt which debt was the result, invariably, of the debtor being enticed to gamble on credit and beyond his means. In fact, I would suggest that a law should be enacted to allow a gambler to sue a casino for having enticed him to gamble beyond his means if that is not already a common law. Malaysia may soon have casinos at its doorsteps giving easy access to Malaysians. Its populace must be protected from being enticed to gamble on credit and the only way to discourage this entrapment is to prevent such foreign judgment founded on gambling on credit from being registered and from being enforceable in Malaysia.

I do no propose to refer to cases of foreign countries regarding their attitude on gambling as they do not spell out the public policy of Malaysia. In all the foreign cases referred to by counsel for the judgment creditor, they involved countries that do not have a God-fearing principle as part of their philosophy as Malaysia has. So, those cases are not relevant.

Conclusion

In the premises, the application for registration of the judgment is dismissed with no order as to costs. The judgment debtor is not deserving of costs as he had engaged in an activity that his religion frowns upon and which it would be against public policy to assist him by way of awarding him costs.